

FILED

DEC 17 2019

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY OLIVER, Pro Se

1002060648

Po Box 249

MORGAN, GEORGIA 39866

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANTHONY OLIVER,

CASE NO. 19-CV-04110-JSC

PLAINTIFF,

HON. JACQUELINE SCOTT CORLEY

UNITED STATES DISTRICT JUDGE

V.

SQUARE, INC., A

CALIFORNIA CORPORATION;

PLAINTIFF'S NOTICE OF MOTION

AND MOTION FOR AN ORDER

EXTENDING THE TIME TO SERVE

THE DEFENDANT; MEMORANDUM OF

POINTS AND AUTHORITIES;

DATE FILED: JULY 7, 2019

TO: THE DEFENDANT AND THE COURT:

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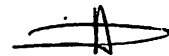
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PLEASE TAKE NOTICE THAT AS SOON AS THIS MATTER MAY BE HEARD, PLAINTIFF ANTHONY OLIVER WILL MOVE FOR AN ORDER EXTENDING THE TIME TO SERVE THE DEFENDANT IN THE UNITED STATES DISTRICT COURT LOCATED AT 450 GOLDEN GATE AVENUE, COURTROOM 8, SAN FRANCISCO, CALIFORNIA 94102.

THIS MOTION IS BASED ON THIS NOTICE OF MOTION, THE ACCOMPANYING MEMORANDUM OF POINTS AND AUTHORITIES, ALL OF THE PLEADINGS AND OTHER DOCUMENTS ON FILE IN THIS CASE, ALL OTHER MATTERS OF WHICH THE COURT MAY TAKE JUDICIAL NOTICE, AND ANY FURTHER ARGUMENT OR EVIDENCE THAT MAY BE RECEIVED BY THE COURT AT THE HEARING.

RESPECTFULLY SUBMITTED,



ANTHONY OLIVER #1002060648

Dated: December 10, 2019

CALHOUN STATE PRISON

PO BOX 249

MORGAN, GA 39866

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

ON JULY 6, 2019, PLAINTIFF ANTHONY OLIVER, ("PLAINTIFF"), COMMENCED THIS ACTION AGAINST THE DEFENDANT SQUARE, INC., ("DEFENDANT") FOR THEIR VIOLATIONS UNDER THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. SECTION 227, et seq., ("TCPA") FOR SENDING PLAINTIFF UNAUTHORIZED AUTOMATED TEXT MESSAGES FOR THE PURPOSE TO ADVERTISE AND PROMOTE THE DEFENDANT'S MONEY TRANSFER APPLICATION USING AN AUTOMATIC TELEPHONE DIALING SYSTEM, ("ATDS") WITHOUT PLAINTIFFS PRIOR EXPRESS CONSENT. ECF DKT. #1.

THIS CASE HAS BEEN LINGERING ON THE COURT'S DOCKET WITH NEARLY SIX (6) MONTHS APPROACHING, AND IT APPEARS FROM THE DOCKET THAT THE DEFENDANT HAS NOT BEEN SERVED BY THE UNITED STATES MARSHAL. IF THE DEFENDANT HAS BEEN SERVED IN ACCORDANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE, THEN THE DEFENDANT HAS FAILED TO SIGN AND RETURN THE WAIVER OF SERVICE. FURTHER, FED. R. CIV. P., RULE 4 (M), MANDATES THAT THE DEFENDANT BE SERVED WITH 90 DAYS AFTER THE SUMMONS HAS BEEN ISSUED. AGAIN, THE DOCKET DOESNT REFLECT THE DEFENDANT HAS BEEN SERVED, NOR A WAIVER BEING FILED. PLAINTIFF NOW MOVES FOR AN ORDER EXTENDING THE TIME TO SERVE DEFENDANT.

II. ARGUMENT

PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 4(M) MANDATES THAT ANY DEFENDANT IN A CIVIL ACTION MUST BE SERVED WITHIN THE MANDATED TIME FRAME OF NO MORE THEN 90 DAYS ONCE THE SUMMONS HAS BEEN ISSUED BY THE COURT.

AS HERE, THE PROPOSED SUMMONS WAS ISSUED ON SEPTEMBER 18, 2019, AND TRANSMITTED TO THE UNITED STATES MARSHAL FOR SERVICE. ECF DKT. # 13.

SOMETIME THEREAFTER, AND UNKNOWN TO PLAINTIFF, THE UNITED STATES MARSHAL EITHER PERSONALLY SERVED THE SAID DEFENDANT BY PERSONAL SERVICE OR BY CERTIFIED MAIL. BUT WHAT MUST BE NOTED IS THAT THE TIME TO SERVE THE DEFENDANT SQUARE, INC., HAS CLEARLY LAPSED. FURTHER, PLAINTIFF HAS SENT COPIES OF ALL NOTICES TO DEFENDANTS' AGENT FOR SERVICE DESIGNATED AS C.T. CORPORATION LOCATED AT 818 W. SEVENTH STREET, #930, LOS ANGELES, CALIFORNIA 90017.


BECAUSE THE DOCKET DOES NOT IN ITSELF, REFLECT THAT EITHER THE DEFENDANT RECEIVED THE SUMMONS BY CERTIFIED MAIL BY THE UNITED STATES MAIL, OR BY PERSONAL SERVICE. THIS CASE HAS BEEN LINGERING ON THE COURTS DOCKET NOW FOR OVER FIVE (5) MONTHS.

III. CONCLUSION

FOR ALL THE FOREGOING REASONS, THE COURT SHOULD GRANT PLAINTIFF'S MOTION EXTENDING THE TIME TO SERVE THE DEFENDANT SHOULD BE GRANTED. FURTHER, THIS COURT SHOULD EXERCISE ITS INHERENT AUTHORITY TO HAVE ITS LAW CLERK INQUIRE OR CONTACT THE UNITED STATES MARSHALS SERVICE FOR A STATUS UPDATE AS TO THE SERVICE OF THE SUMMONS ON THE SAID DEFENDANT.

DATED: DECEMBER 10, 2019

RESPECTFULLY SUBMITTED,


ANTHONY OLIVER #1002060648

PO BOX 249

MORGAN, CA, 39866

CERTIFICATE OF SERVICE

I, ANTHONY OLIVER, CERTIFY THAT ON DECEMBER 10, 2019, I FILED THE FOREGOING PLAINTIFFS MOTION TO EXTEND TIME VIA THE COURT'S CM/ECF ELECTRONIC FILING SYSTEM. A COPY WILL ALSO BE MAILED TO:

C.T. CORPORATION

c/o SQUARE, INC., A CA CORP.

818 W. SEVENTH STREET, #930

LOS ANGELES, CALIFORNIA 90017